

REMARKS

1) The Examiner stated that in view of Applicants' submission of a Request for Continued Examination under 37 CFR § 1.114, the finality of the previous Office action had been withdrawn pursuant to 37 CFR § 1.114.

2) The Examiner stated that the Application failed to comply with the requirements of 37 CFR § 1.821(a)(1) and (a)(2).

Applicants herewith provide a substitute Sequence Listing, on paper and CRF. Applicants believe that the Sequence Listing complies with 37 CFR § 1.821(a)(1) and (a)(2) and contains no new matter.

3) The Examiner stated that the Declaration under 37 CFR § 1.132 filed Jan 30, 2009 was insufficient to overcome the rejection of claims 19-23 and 25-31 based upon 35 USC § 103(a) in view of Braven et al. (US 2005/0221315 A1) as set forth in the last Office action because: The Declaration indicated that the inventive disclosure of US 2005/0221315 A1 was by H. Braven and R. Keay. However the instant application is a different inventive entity from US 2005/0221315 A1, having three co-inventors: H. Braven, R. Keay, and S. Flower.

The Examiner then stated that the Declaration failed to show that the relevant portions of the US 2005/0221315 A1 reference (two inventors) originated with or were obtained from Applicant (three inventors). That is, the Examiner continued, the Declaration failed to indicate that while S. Flower is a co-inventor of some claims in the instant invention, his co-inventorship does not co-extend to the claimed subject matter disclosed in US 2005/0221315 A1 reference and subject to the rejections under 35 USC § 103(a) set forth *infra*.

Remaining Rejections under 35 USC 103(a)

4) The Examiner stated that claims 19, 25, 26, 27, and 31 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hugli (USPN 6,235,494 B1) in view of Braven et al. (US 2005/0221315 A1) for reasons of record set forth in the Prior Action.

5) The Examiner stated that claims 19, 20, 22, 23, 25, 26, and 27 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Ludin et al. (USPN 6,495,336 B1) in view of Braven et al. for reasons of record set forth in the Prior Action.

6) The Examiner stated that claims 19, 20, 22, 25, 26, 28, 29, and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Braven et al. for reasons of record set forth in the Prior Action.

7) The Examiner stated that claims 19-22, 25, 26, 28, 29, and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Braven et al. and further in view of Forrest et al. (USPN 4,978,610) for reasons of record set forth in the Prior Action.

8) The Examiner stated that claims 19, 20, 22, 23, 25, 26, 28, 29, and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Braven et al. and further in view of Nicholson (USPN 4,456,337) for reasons of record set forth in the Prior Action.

9) The Examiner stated that Applicants' arguments filed January 30, 2009, had been fully considered but they were not persuasive. The Examiner stated that Applicant argued that the Declaration under 37 C.F.R. § 1.132 by one of the inventors stating that along with one other co-inventor, are the inventors of the published patent application (US 2005/0221315 A1) and that the invention disclosure was by them and not by another.

The Examiner then stated that the Applicants stated that this is sufficient to disqualify the preference as Prior Art under 35 U.S.C. § 102(e) and therefore 35 U.S.C. § 103(a). The Examiner stated that this was not found to be persuasive as the Declaration was found to be insufficient to overcome the rejections for the reasoning provided above.

10) Applicants herewith submit a second Declaration under 37 C.F.R. § 1.132 made by Helen Braven, Ph.D., one of the inventors, showing that, with Dr. Russell Keay and Dr Stephen Flower, she is an inventor of the instant patent application and that she and Dr Keay are also inventors of the published patent application, US 2005/0221315 A1, therein referred to as “Braven et al.”. Dr. Braven also declares that the subject matter of Braven et al. was not contributed to by Dr Stephen Flower.

Applicants respectfully submit that the subject matter disclosed in Braven et al. was derived from two inventors of the subject matter sought to be patented in the instant application and not by “another” and therefore Braven et al. is disqualified as prior art under 35 U.S.C. § 102(e).

Applicants believe that the Declaration under 37 C.F.R. § 1.132 is an uncontradicted “unequivocal statement” (MPEP 716.10).

Therefore, Applicants submit that Braven et al. is disqualified as prior art under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a).

11) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 25, 26, 27, and 31, are therefore not unpatentable over Hugli (USPN 6,235,494 B1) in view of Braven et al.

Applicants respectfully request that the rejection of claims 19, 25, 26, 27, and 31 under 35 U.S.C. § 103(a) be withdrawn.

12) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 22, 25, 26, and 27, are therefore not unpatentable over Ludin et al. (USPN 6,495,336 B1) in view of Braven et al.

Applicants respectfully request that the rejection of claims 19, 20, 22, 25, 26, and 27 under 35 U.S.C. § 103(a) be withdrawn.

13) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 22, 25, 26, 28, 29, and 30, are therefore not unpatentable over Nagy (2000) in view of Braven et al.

Applicants respectfully request that the rejection of claims 19, 20, 22, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) be withdrawn.

14) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20-22, 25, 26, 28, 29, and 30, are therefore not unpatentable over Nagy in view of Braven et al. and further in view of Forrest et al. (USPN 4,978,610).

Applicants respectfully request that the rejection of claims 19-22, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) be withdrawn.

15) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 22, 23, 25, 26, 28, 29, and 30, are therefore not

unpatentable over Nagy in view of Braven et al. and further in view of Nicholson (USPN 4,456,337).

Applicants respectfully request that the rejection of claims 19, 20, 22, 23, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) be withdrawn.

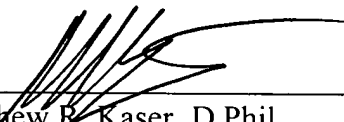
CONCLUSION

With these amendments and arguments, Applicants believe that the application is in condition for allowance. If the US Patent Office believes that communication would further the prosecution of this application, then the appropriate US Patent Office personnel are invited to contact the Applicants' below-signed representative at their earliest convenience.

Applicants believe that no fees are required with this Response. However, if the USPTO determines that an additional fee is due, the Commissioner is hereby authorized to charge Bell & Associates' Deposit Account No. **50-3194**.

Respectfully submitted,

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